REMARKS

Claims 1-7 and 9-16 were pending and under examination when the Application was examined. Claim 8 was withdrawn from examination pursuant to a previous restriction requirement. Claims 9-10 and 13-14 are canceled. Claims 1-7, 11-12, 15 and 16 are now pending and under examination, of which Claims 1, 12 and 16 are independent. All of the pending and under examination claims have been amended. No new matter is introduced.

Examiner Interview

A telephonic interview was conducted on September 11, 2008, between the Examiner, the primary Examiner, the Applicant and the representatives of the Applicant, P. Pogodin and F. Sirjani. The primary Examiner made suggestions regarding overcoming 101 issues that are reflected in the current amendments to the claims. Applicant and his representatives presented their arguments regarding the 103 rejections. The primary Examiner indicated that those issues would be assessed once the response was received. No agreement was reached.

Claim rejections -35 U.S.C. 112(2)

Claims 1-7 and 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being allegedly indefinite.

Applicants respectfully traverse this rejection in view of the amendments to the claims and further in view of the following arguments.

Claim 1 is rejected for using the phrases "an underlying," "at or around," and "and/or." Amendments to the claim address the issues raised by the Examiner.

Claim 10 is rejected for the use of the phrase "wherein said further contracts have terms as defined in claim 1" where the Examiner finds it allegedly unclear "whether the contract must include at least one term from claim 1 or whether the contract may include zero terms from claim 1." (Office action, p. 2.) The rejection of claims 12-14 and 16 is directed to their dependency from claims 1, 9 and 10. These claims are further rejected as allegedly being single means claims.

Claims 9-10 and 13-14 are canceled.

Claims 12 and 16 are amended into independent form and the reference to claim 1 that was the cause for the alleged indefiniteness is removed. As a result of the amendments, claims 12 and 16 include further elements and do not fall in the single means category.

Withdrawal of the rejections is requested.

Claim Rejections – 35 U.S.C. 101

Claims 1-7 and 9-16 are rejected under 35 USC 101 as being allegedly directed to nonstatutory subject matter. Applicants respectfully traverse this rejection in view of the amendments to the claims and further in view of the following arguments.

Claim 1 is rejected as being allegedly directed to non-statutory abstract idea. (Office action, p. 4.)

In response, claim 1 is being amended to recite "A computer implemented method for trading...." Further, this claim now includes a step of "at an exchange." As amended, claim 1 is directed to the process category of statutory subject matter and as it is implemented using a machine, i.e. a computer, it is tied to a statutory class (Office action, p. 5, item 9) and is not considered an abstract idea.

Claims 2-11 and 15 that depend from claim 1 are directed to the process category of statutory subject matter, at least, by virtue of depending from claim 1.

Claims 9 and 10 and 13 and 14 are canceled.

Claims 12 and 16 were rejected as allegedly embracing or overlapping two different statutory classes. Claims 12 and 16 are amended to recite subject matter within the machine or manufacture categories exclusively. Claim 12 is a system claim and claim 16 is directed to a "computer readable medium."

Withdrawal of the rejections is requested.

Claim Rejections 35 U.S.C. 102(e) and 35 U.S.C. 103

Claims 1 and 10-16 are rejected under 35 U.S.C. 102(e) as allegedly anticipated by Mosler (U.S. Patent No. 6,304,858).

Claims 2-7 and 9 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Mosler in view of Lara (U.S. Patent Application Publication No. 2004/0019555.)

Applicants respectfully traverse these rejections in view of the amendments to the claims and further in view of the following arguments.

<u>Claim 1</u>

Claim 1 is amended to recite: "A <u>computer-implemented method for trading</u>, between a buyer and a seller, <u>at an exchange</u>, a futures exchange, an options exchange, or a futures and options exchange, the method comprising:

<u>receiving first inputs from the buyer and seller corresponding to a standardized form of contract</u> for trading at a price on which the buyer and the seller agree, the standardized form of contract having <u>contract terms</u> <u>requiring the buyer and seller to settle based on a final settlement price</u>;

<u>receiving second inputs from the buyer and the seller at or prior to a first reference time</u> wherein the second inputs include bid prices and offer prices for the standardized form of contract;

<u>matching the first inputs and the bid prices and the offer prices to form contracts</u>; and

<u>determining said final settlement price</u> as follows:

<u>receiving a first level of an underlying as at said first reference time</u>, the first reference time determined in accordance with the contract terms, the underlying being a specified observable quantity relating to an item selected from a group consisting of stock, commodity, financial asset, basket of financial assets, financial index and financial contract;

<u>receiving a second level of said underlying at a second reference time</u>, the second reference time determined in accordance with the contract terms and <u>being later than said first reference time</u>; and

<u>determining</u>, in accordance with the contract terms, <u>the final settlement price by reference to both said first level and said second level</u>." (Emphasis added.)

Applicant submits that Mosler, even if combined with Lara, does not teach or suggest "receiving a first level of an underlying as at said first reference time ... receiving a second level of said underlying at a second reference time ... determining ... the final settlement price by reference to both said first level and said second level" of amended claim 1. (Emphasis added.)

The Office action is citing to Mosler, col. 4, lines 27-29, for teaching the "final settlement price" of claim 1, to col. 4, lines 29-36, for teaching "prior to a first reference time ... trading of contracts," and to col. 7, lines 44-51, for teaching "wherein the final settlement price is determined as follows" of claim 1 prior to the current amendments. (Office action, p. 6.)

However, Mosler teaches "The contract obligates a buyer and a seller to settle the contract based on a price of the contract at a first effective date." (Mosler, col. 4, lines 27-29, emphasis added.) This passage limits the determination of the price to the price "at a first effective date." Mosler does mention "a second effective date" in some of its claims. For example, claim 8 of Mosler states "The method of claim 1, further comprising the step of: automatically rolling the contract over after the first effective date to a second effective date at which said buyer and seller are obligated to settle based on the price of the contract at the second effective date." (Mosler, col. 34, lines 44-49, emphasis added.) These passages of Mosler teach two different prices, one settled at a first effective date and another settled at a second effective date. This is an either this or that situation. The settlement price is not a function of prices at both times. As such, Mosler does not teach or suggest "determining ... the final settlement price by reference to both said first level and said second level" of claim 1.

Lara was cited for teaching the limitations of dependent claims 2-7 and 9 and does not cure the deficiency of Mosler. (Office action, p. 9.) Moreover, Lara too teaches a strike price that has already been defined at the time of trading and therefore depends on a single price at a single time. For example, claim 1 of Lara states "selling a first short term protection device ... having a first strike price and first term; buying a second short term protection device ... having a second strike price and a second term ... said market maker receiving a guaranteed gain of ask price ... plus said first or second strike price ...." (Lara, claim 1.) As such each device in Lara has its own single strike price. Lara too does not teach or suggest "determining ... the final settlement price by reference to both said first level and said second level."

Accordingly, Mosler, alone or combined with Lara, does not teach or suggest all elements of claim 1 and claim 1 remains patentable in view of these references.

Claims 12 and 16

Independent claims 12 and 16 include "receiving a first level of an underlying as at said first reference time ... receiving a second level of said underlying at a second reference time ... determining ... the final settlement price by reference to both said first level and said second level."

The cited references do not teach or suggest at least the above elements as argued above with respect to claim 1.

Accordingly, the remaining independent claims of the Application are also believed to be patentable over the cited references.

Dependent Claims

Claims 2-7, 11 and 15 depend from claim 1.

With respect to the rejection of dependent claims while continuing to traverse the Examiner's characterization of the teachings of the references used by the Examiner in rejecting these claims, Applicants respectfully submit that these claims are patentable due to the amendments to the independent claims and by definition, by virtue of their dependence upon their respective patentable independent claims.
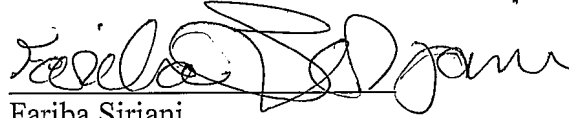
Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

Fariba Sirjani
Registration No. 47,947

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON DC OFFICE
23373
CUSTOMER NUMBER

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